

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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Notice of Proposed Rulemaking	)	
	)	
Appropriate Regulatory Treatment for	)	CS Docket No. 02-52
Broadband Access to the Internet Over	)	
Cable Facilities	)	
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**REPLY COMMENTS OF THE CITY OF GREENSBORO, NORTH CAROLINA**

The City of Greensboro, North Carolina files these comments in support of the comments filed by the Alliance of Local Organizations Against Preemption (the "Alliance"). Like the Alliance, the City of Greensboro believes that local communities (a) have the authority under state law to require cable operators to obtain additional authorizations to use and occupy public rights of way to provide cable services, and to enforce existing authorizations that have been granted for the service; (b) have the authority to obtain fair and reasonable compensation for use and occupancy of the public rights of way to provide non-cable services; and (c) have the authority to regulate cable companies in their provision of non-cable services, as provided under the Cable Act.

These comments will also provide information regarding the status of cable modem service in our community.

1. Greensboro and the status of cable modem service.

City of Greensboro is a City of 229,634. It is served by AOL/Time Warner, which has approximately 68,000 subscribers. The cable system serving Greensboro offers subscribers a variety of programming tiers. The October 1994 franchise requires a "750Mhz system (100 channels) utilizing a fiber to the feeder design."

2. The Greensboro franchise and cable modem service.

Our 1994 franchise anticipated the provision of cable modem service throughout the community by requiring that, " fiber optic receiver nodes located thought out the plant shall divide the distribution of cable signals

to 500 homes per fiber node or less.” Cable modem service has been offered in our community and has proven to be a success.

The franchise requires a franchise fee payment “of up to five [5%] percent of gross annual revenues during the period of its operation under the franchise”. Pursuant to that provision, the City is entitled to receive franchise fees on cable modem service. The City received \$174,316.88 in cable modem franchise fees in 2001. These payments were made in consideration of the grant of the franchise and for the use of the City’s right of way. The City franchise was written to permit the operator to provide both cable services and other services, so long as the operator complied with the franchise terms. The franchise was granted so that Time Warner and its successors “shall provide a modern, City-wide cable communications system to the residents and institutions of the City in accord with this franchise”. The City estimates a loss of \$278,000 over the next year if Greensboro is delayed in collecting a fee on revenues from cable modem service. The City does not allow the use of its right of way unless a franchise fee is paid, and the franchise agreement is complied with, which includes limiting the use of the right of way to those specific uses set forth in the franchise agreement. If a particular use is not specified in the franchise agreement, it may not be provided using the City’s right of way.

The City would note that, contrary to the issues raised in the NPRM at paragraph 97, to wit, “that local regulations may have delayed the deployment of cable modem service”, the City franchise which specified bandwidth, node size and other requirements ensured the system was capable of providing cable modem services in an efficient and effective manner and thus hastened the deployment to the benefit of subscribers, the cable operator and the City.

### 3. How Greensboro regulates cable modem service.

The City of Greensboro receives complaints from cable subscribers regarding the services provided by cable operators. These include complaints about traditional video programming services and about cable modem services. The City has a good and cooperative relationship with AOL/Time Warner that extends to subscriber complaints. Nonetheless, responding to these complaints requires significant staff time and effort.

There are customer service problems associated with cable modem services and it is often difficult, if not impossible to separate regulation of cable modem service from the regulation of cable service in many critical respects. Cable modem service is marketed jointly with cable service and is part and parcel of the cable subscribers’ monthly service in both perception and reality. Subscriber complaints often involve both video and modem services

since the same cable lines supply all services. The number called by a subscriber is the same for any problem and one customer service representative may handle all complaints. Indeed the promotion and marketing of cable services includes cable modem service often in conjunction with pricing discounts if multiple services are taken. The entire point of most cable marketing in the last few years has been to buy multiple cable services , including modem service, in a discounted bundle.

As a result, when one service has problems, the quality of the other service can be affected. Customers are advised on their bill by the cable operator that they can call our office with complaints, and as far as we can tell, at no time does the operator advise the customer that protections accorded with respect to cable service do not apply with respect to cable modem service. In fact subscribers believe the privacy protections of cable service apply to all cable services including cable modem. In the City's view, there is a substantial and continuing need to protect consumers of cable modem service, in light of the complaints we receive, and because of its close tie to video services.

Cable modem service is subject to City customer service rules based on those put forward by the FCC. In addition to customer service rules, the City franchise and ordinance require all cable services be provided throughout the service area. Redlining is not permitted for any service received from the cable operator.

4. Greensboro and broadband deployment.

The City of Greensboro believes it is very important to encourage broadband deployment, and to encourage development of broadband applications. The City believes that in order to achieve the promise of broadband, broadband has to be available to the entire community, as far as possible. Greensboro wants to avoid knowledge and opportunity gaps created because some parts of the community have access to broadband information, while others do not.

Respectfully submitted,

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Clyde B. Albright  
City of Greensboro  
P.O. Box 3136  
Greensboro, NC 27402-3136  
(336) 373-2320

Assistant City Attorney for the City of Greensboro

July 29, 2002